

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554**

**FCC 13M-2
09574**

In the Matter of	)	EB Docket No. 11-71
)	
MARITIME COMMUNICATIONS/LAND	)	File No. EB-09-IH-1751
MOBILE, LLC	)	FRN: 0013587779
)	
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio)	
Services)	
	)	Application File Nos.
Applicant for Modification of Various	)	0004030479, 0004144435,
Authorizations in the Wireless Radio Services	)	0004193028, 0004193328,
	)	0004354053, 0004309872,
Applicant with ENCANA OIL AND GAS (USA),	)	0004310060, 0004314903,
INC.; DUQUESNE LIGHT COMPANY, DCP	)	0004315013, 0004430505,
MIDSTREAM, LP; JACKSON COUNTY	)	0004417199, 0004419431,
RURAL MEMBERSHIP ELECTRIC	)	0004422320, 0004422329,
COOPERATIVE; PUGET SOUND ENERGY,	)	0004507921, 0004153701,
INC.; ENBRIDGE ENERGY COMPANY,	)	0004526264, and 0004604962
INC.; INTERSTATE POWER AND LIGHT)	
COMPANY; WISCONSIN POWER AND)	
LIGHT COMPANY; DIXIE ELECTRIC)	
MEMBERSHIP CORPORATION, INC.;)	
ATLAS PIPELINE-MID CONTINENT, LLC;)	
AND SOUTHERN; CALIFORNIA REGIONAL)	
RAIL AUTHORITY)	
)	
For Commission Consent to the Assignment of)	
Various Authorizations in the Wireless Radio)	
Service)	

SHOW CAUSE ORDER

Issued: February 25, 2013

Released: February 25, 2013

On January 31, 2013, the Enforcement Bureau (the Bureau) submitted its Request for a Prehearing Conference on Choctaw's Party Status. In that conference, the Bureau wishes to resolve questions that "have arisen concerning [Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (Choctaw's)] status as a party."¹ In particular, the Bureau contends that questions have arisen as to

¹ Request at ¶ 1.

whether Choctaw has adequately shown that its participation would aid the Presiding Judge's consideration of the matters set for hearing.²

Section 1.223(c) of the Commission's rules states that persons seeking to intervene in a proceeding more than 30 days after publication of its hearing designation order in the Federal Register "shall set forth the interest of petitioner in the proceeding, show how such petitioner's participation will assist the Commission in the determination of the issues in question, must set forth any proposed issues in addition to those already designated for hearing, and must set forth reasons why it was not possible to file a petition" within those 30 days.³ If good cause for not filing within those 30 days is shown, the Presiding Judge may either (1) allow the petitioner to intervene as a full participant to the proceeding or (2) allow the petitioner to intervene "limited to particular issues or to a particular stage of the proceeding."⁴

In its Petition to Intervene, Choctaw stated that its participation in this proceeding would "aid in the Presiding Judge's consideration of the matter, especially as it relates to plans to pursue *Second Thursday* relief and the Plan confirmed by the Bankruptcy Court."⁵ In the context in which it was presented, this phrasing was read to convey that Choctaw would assist the Presiding Judge in his consideration of the issues set for hearing by the *Hearing Designation Order*⁶ in the same capacity as the other parties participating in this proceeding. As such, the Presiding Judge understood Choctaw's statement to signify that it would fully participate in the discovery phase of this proceeding. With those expectations, Choctaw was permitted to intervene as a full participant.⁷

Choctaw's responses to the Bureau's discovery requests now suggest that Choctaw's belief as to its role in this proceeding differs drastically from the role understood and approved by the Presiding Judge. Choctaw insists that the above-quoted line from its Petition to Intervene sets out only "a limited role in this hearing," in which it would be too burdensome to require it to respond to "the Bureau's far-reaching interrogatories [and demands for documents]."⁸ This view is inconsonant with the Presiding Judge's reading of the arguments presented by Choctaw in its Petition and, consequently, with *Order*, FCC 12M-60, which placed no limits on Choctaw's involvement in this proceeding. Choctaw objects, in part, to more than half of the Bureau's interrogatories and nearly all of the Bureau's document requests on the grounds that (1) the sought information beyond the "the limited scope" of its participation in this proceeding; (2) "is more appropriately sought from [Maritime Communications/Land Mobile, LLC];" or (3) is publically available from Commission sources.⁹ This refusal to fully participate in discovery and repeated insistence that sought information is better acquired from other parties is squarely at odds with the Presiding Judge's understanding that Choctaw would assist as a full participant in this proceeding.

The "limited role" that Choctaw has envisioned for itself in this proceeding cannot be reconciled with the request to fully participate that it mistakenly communicated to the Presiding Judge and on which

² Request at ¶ 3.

³ 47 C.F.R. 1.223(c).

⁴ *Id.*

⁵ Choctaw's Petition to Intervene at 2.

⁶ *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, EB Docket No. 11-71, 26 FCC Rcd 6520 (2011).

⁷ See *Order*, FCC 12M-60.

⁸ Choctaw's Objections and Responses to the Bureau's First Set of Interrogatories at ¶ 2; Choctaw's Objections to the Bureau's First Set of Requests for Documents at ¶ 2.

⁹ See Choctaw's Objections and Responses to the Bureau's First Set of Interrogatories at Answers to Interrogatory Nos. 2-8, 14-16, 21, and 22; Choctaw's Objections to the Bureau's First Set of Requests for Documents at Answers to Request Nos. 2-14.

Order, FCC 12M-60, relied. Thus it is no longer clear how Choctaw will assist the Presiding Judge in the “determination of the issues in question” in this proceeding.¹⁰

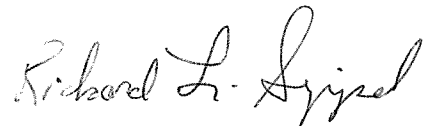
Rulings

While the Bureau requests that the court hold a prehearing conference to revisit the *Order*, a conference is costly and unnecessary. While the Bureau is correct that the discovery deadline of March 1, 2013, is fast approaching,¹¹ timing concerns are outweighed by the drain on time, money, and resources that a conference would place on the parties to this proceeding. Such concerns may easily be alleviated by moving for a limited extension of the discovery period, if necessary. Accordingly, the Bureau’s request **IS DENIED**.¹²

However, in light of the above, Choctaw **SHALL SHOW CAUSE** as to why *Order*, FCC 12M-60, should not be vacated as inconsistent with Choctaw’s intentions to withhold discovery. In particular, Choctaw shall show, in accordance with Section 1.223(c) of the Commission’s rules, how its participation will assist the Presiding Judge in the determination of the issues presented in the *Hearing Designation Order*. Choctaw shall file its Response to this Show Cause Order **by 12 noon on February 28, 2013**. Any parties that wish to respond to Choctaw’s Response to Show Cause Order shall file its responses **by 12 noon on March 6, 2013**.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION¹³



Richard L. Sippel
Chief Administrative Law Judge

¹⁰ 47 C.F.R. 1.223(c).

¹¹ Request at ¶ 8.

¹² The Bureau’s “reservation of its right to file a motion to compel concerning Choctaw’s responses at a later time should that become necessary,” Request at n.1, is noted. The Bureau’s Motion to Compel Choctaw to Respond to Discovery Requests, submitted February 21, 2013, and Choctaw’s Motion to Strike, submitted February 22, 2013, will be addressed in a future *Order*.

¹³ Courtesy copies of this *Order* sent by e-mail on issuance to each counsel and Mr. Havens.